

State of New Hampshire
PUBLIC EMPLOYEE LABOR RELATIONS BOARD

BEDFORD POLICE ASSOCIATION,
SEA/NH

Complainant

v.

TOWN OF BEDFORD

Respondent

CASE NO. P-0701:7

DECISION NO. 85-51

APPEARANCES

Representing the Bedford Police Association, SEA/NH

Ward P. Freeman, SEA Representative

Representing the Town of Bedford

Neil G. Gauthier, Esq., Counsel

Also in Attendance

Bruce Cailler, Bedford Police Dept.
Richard Audette, Chief, Bedford Police
Leon C. Biscornet, Bedford Police Dept.
Roger Grenier, Bedford Police Dept.
Leon French, Bedford Police Dept.

BACKGROUND

On February 23, 1985, the Bedford Police Association filed a complaint of unfair labor practices against the Town of Bedford. The Police Association is the exclusive representative for all employees in the bargaining unit of the Bedford Police Department and is currently operating under a negotiated collective bargaining agreement covering patrolmen and sergeants of said department.

The Police Association alleges that Officer Bruce Cailler, a member of the bargaining unit, called the Bedford Police Department at approximately 2:30 a.m. on January 1, 1985, to report that he would be unable to serve his regular scheduled shift at 7:00 a.m. because he was ill. On January 2, 1985, Officer Cailler's supervisor, Sergeant Biscornet, recommended that Officer Cailler's holiday pay and sick pay be withheld as a disciplinary measure because the Sergeant believed that Officer Cailler was not sick since he had left his home at about 3:00 p.m. on January 1.

Article 8, Sections 1 and 2 of the collective bargaining agreement identify the various methods of compensation for holidays. At the time in question, the Town was paying holiday pay as a part of the regular weekly paycheck for the week which included the holiday. The Association further states that the Town of Bedford maintains disability insurance program which covers employees in the bargaining unit for pay loss due to injury or illness. Article 12, Section 12.3.1 of the collective bargaining agreement requires that the Town continue paying an employee's regular rate of pay for the five days between the beginning of a period of absence for illness and the onset of a disability insurance benefits. On January 10, 1985, Officer Cailler's regular paycheck had a portion of one day's pay withheld and did not include one extra day's pay for the holiday. The withheld day's pay had a value of \$80.70 of which only \$16.14 was paid. The unpaid holiday pay had a value of \$64.56.

The Association and Officer Cailler pursued a grievance over the matter and on January 15, 1985 a hearing was held by the Chief of Police who decided that if Officer Cailler was well enough to leave his house, he was well enough to report to work. The grievance was denied. On February 14, 1985, the Board of Selectmen held a brief meeting before an appeal hearing on this issue and ruled that they had no jurisdiction to hear the case under Article 5, Section 5.3.4 of the collective bargaining agreement since Officer Cailler had not been "suspended, laid off, or discharged".

The Association alleges that the Town of Bedford committed an unfair labor practice by failing to uphold the provisions of the collective bargaining agreement, Sections 8.1, 8.2, and 12.3.1, thereby violating RSA 273-A:5, I (h). Also, the Town of Bedford committed an unfair labor practice by creating a rule with respect to remaining at home when an employee reports him or herself to be ill, said rule not having been published or disseminated in any way, thereby violating RSA 273-A:5, I (i), by invalidating Section 12.3.1 of the contract.

On March 15, 1985, the Town responded admitting that it had disciplined Officer Cailler and that the grievance was taken to the Police Chief who denied the grievance in that the selectmen had denied jurisdiction over the matter. The Town of Bedford however argues that it did in fact uphold the provisions of the collective bargaining agreement in accordance with RSA 273-A and requests that the complaint be denied.

Subsequent to the filing of the Town's answer, the Bedford Police Association discovered that the Town had assigned one of the officers in the bargaining unit to present the case to the PELRB and filed a complaint with the PELRB over this matter. The PELRB contacted the Town of Bedford and made it clear that under no circumstances could a member of the bargaining unit be required to present the case against another member of the bargaining unit before the PELRB.

A hearing was held at the Public Employee Labor Relations Board's office in Concord, New Hampshire on June 20, 1985 with all parties represented.

FINDINGS OF FACT AND RULINGS OF LAW

None of the facts in the case were substantially disagreed upon by either side:

Officer Cailler did call in sick for the 7 am shift on January 1, 1985,

at approximately 2:30 a.m. and did report to work on January 2, 1985, at which point he was advised by his supervisor that he had not been legitimately absent and that the supervisor would recommend that his pay be subsequently withheld and that he would lose the holiday pay for that particular week. A grievance was filed with the Chief and denied and the Board of Selectmen did in fact deny that they have any jurisdiction in the matter since Mr. Cailler had not been suspended, dismissed or laid off. Subsequent to which the case has been brought to the PELRB on the grounds that the contract has been breached.

Testimony at the hearing established the basic behavior of Officer Cailler and the fact that Officer Cailler's superiors did not believe he had been ill and did in fact initiate a letter to him to that effect for placement in his file and also a letter was initiated by a superior officer to the Chief of Police recommending that Officer Cailler's pay be docked for the day he was out sick and also that the holiday pay not be paid since he had not fulfilled the full forty hour week.

Officer Cailler admitted that he had left his home to go to the local market and purchase some patent medicine and that later on the same day he had gone to a friend's home to watch television. Further testimony established that Officer Cailler was observed by a member of the department arriving home in the wee hours of January 2 and was accompanied, in a separate vehicle, by a female friend. Throughout the day on January 2, further testimony determined that Officer Cailler was observed in his movements to and from his apartment and his friend's house. Further testimony established that when confronted with the request to justify his absence, Officer Cailler became somewhat upset and simply referred to the fact that he had been out sick.

Chief of Police testified that it was his intention to back up the judgment of his superior officers and dock the pay of Officer Cailler and at the same time not to pay him for the holiday since he had not worked forty continuous hours, which was the department's practice according to the Chief.

Testimony was taken with respect to "light duty" appointments and whether or not these were expected or not and it seems as if the department has no particular policy with respect to "light duty assignments".

The Police Association argues that the contract requires payment for being out sick and that the contract further stipulates certain holidays will be in fact paid and that these are not subject to interpretation. The Town of Bedford argued that the payment of holiday pay in past practice was only when the individual had completed a forty hour work week and therefore the Town was within its rights to both dock Mr. Cailler's pay and also not to pay him for the holiday pay.

At the request of the Board, both the Association and the Town addressed a question of the grievance procedure as contained in their contract and there was a variety of opinions about its inadequacies given that the Chief of Police on all matters except dismissal, suspension or lay off appears to be the entire grievance procedure.

DECISION AND ORDER

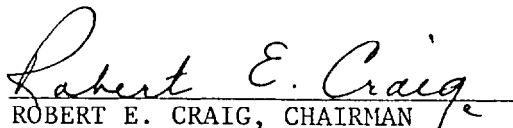
It is the decision of the PELRB:

- 1) That the City committed an unfair labor practice by failing to pay

Officer Cailler for the day he reported in sick. Lacking department regulations and/or contract provisions relating to the type of activity an individual can engage in while being out "sick", the Department must be governed by the simple application of past practice. Past practice in the department clearly indicates that no policy or regulation applies requiring the surveillance of people out sick or a doctor's note or their reporting for "light duty", etc.

- 2) The holiday pay provisions of the contract appear to be clear but in contravention to at least some past practice in the Department. Normally this dispute over the provisions of the contract would be referred to the grievance process for resolution. However in this case the grievance process itself appears to have problems. Therefore:
- 3) We find that the grievance process involving as the final step, the decision maker who made the initial decision, cannot be viewed as "workable" under the act. We therefore find, that with respect to the grievance procedure in this contract, it does not conform to the "workable grievance procedure" requirement of RSA 273-A. Therefore:

We order the parties to renegotiate and redesign their grievance procedure in order to allow for a review, beyond decision-making level, of an "impartial" person and/or panel; We further order that upon completion of the new grievance procedure agreement, it be submitted to PELRB for review, and further that once "a workable grievance procedure" is in place, we order the dispute over the holiday pay to be referred to the new grievance procedure. No further order is issued in this case.


ROBERT E. CRAIG, CHAIRMAN

Signed this 26th day of June, 1985.

By unanimous decision. Chairman Robert E. Craig presiding. Members Richard W. Roulx, Seymour Osman and Russell Verney present and voting. Also present, Evelyn C. LeBrun, Executive Director.